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10 Attorneys for Defendants
11 Ford Motor Company and Crown Ford

12 UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF CALIFORNIA

14 TRAVIS LAMONTE,
15 Plaintiff,

16 vs.

17 FORD MOTOR COMPANY; CROWN
18 FORD; AND DOES 1 THROUGH 10,
19 INCLUSIVE,
20 Defendants.

Civil Action No.:

**NOTICE OF REMOVAL OF
CIVIL ACTION UNDER 28 U.S.C.
SECTION 1441(b) (Diversity
Jurisdiction)**

*Complaint Filed: April 17, 2018
Trial Date: not set yet*

21 **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

22 **PLEASE TAKE NOTICE THAT** Defendant FORD MOTOR COMPANY
23 (“Defendant”), hereby removes to this District Court the state action currently
24 pending in the SACRAMENTO County Superior Court of California, described
25 more fully below.

26 This case is related to numerous cases coordinated in a multidistrict
27 litigation, In re: Ford Motor Co. DPS6 PowerShift Transmission Products Liability
28 Litigation, MDL No. 2814, pending in the Central District of California before the
Honorable André Birotte Jr. Each of the plaintiffs here and in the MDL alleges
breach of warranty obligations by Defendant FORD MOTOR COMPANY

1 regarding a dual-dry clutch PowerShift synchronized 6-speed (DPS6) automatic
 2 transmission installed in a Ford Focus or Ford Fiesta—and each alleges a claim of
 3 fraud in some manner regarding the DPS6 transmission. Ford denies these
 4 allegations. Ford anticipates that this case will be included in the MDL.

5 Issues to be presented to the MDL judge for common and consistent
 6 adjudication include jurisdictional questions that involve, in some cases, whether
 7 California dealership defendants have been improperly joined.

8 **PLEADINGS**

9 1. On April 17, 2018, a complaint (“Complaint”) was filed in the
 10 Superior Court of the State of California in and for the County of SACRAMENTO
 11 entitled, *Travis Lamonte v. Ford Motor Company; Crown Ford; and Does 1*
 12 *through 10, inclusive*, as Case Number 34-2018-00231404. ***A true and accurate***
 13 ***copy of the Complaint is attached hereto as Exhibit “A.”***

14 **TIMELINESS OF REMOVAL**

15 2. Defendant FORD MOTOR COMPANY was served a copy of the
 16 Complaint in this matter on April 27, 2018. Defendant’s removal is timely under
 17 28 U.S.C. § 1446(b) as it is being filed within 30 days of receipt by Defendant,
 18 through service or otherwise, of a copy of the pleading from which it may be
 19 ascertained that the case is removable. ***A true and accurate copy of the Notice of***
 20 ***Service of Process for the Complaint is attached hereto as Exhibit “B.”***

21 **DIVERSITY JURISDICTION**

22 3. In addition, this is a civil action of which this District Court has
 23 original jurisdiction under 28 U.S.C. § 1332, and is one which may be removed to
 24 this District Court by the Defendant pursuant to the provisions of 28 U.S.C. §
 25 1441(b) in that this action involves a controversy between citizens of different
 26 states and the matter in controversy exceeds the sum of \$75,000.00, exclusive of
 27 interest and costs, as described below.

1 4. At the time of the filing of this action and the filing of this Notice of
2 Removal, the Plaintiffs were and are residents of the County of SHASTA, State of
3 California and were and are, therefore, citizens of the State of California. (*See* Exh.
4 “A” (Complaint, paragraphs marked “Preliminary Statement.”).

5 5. At the time of the filing of this action and the filing of this Notice of
6 Removal, Defendant FORD MOTOR COMPANY is incorporated in and a citizen
7 of Delaware. Defendant FORD MOTOR COMPANY is also incorporated in and a
8 citizen of Michigan, with a Principal Place of Business in Dearborn, Michigan. As
9 such, Defendant FORD MOTOR COMPANY is not a citizen of California, but a
10 citizen of Delaware and Michigan. Crown Ford, upon information and belief, is a
11 citizen of the State of California, but it has no real interest in this matter as it is
12 being indemnified by FORD MOTOR COMPANY. Further, there is no cause of
13 action pleaded in the Complaint that is directed to the dealership. As a
14 consequence, Crown Ford is fraudulently joined and/or is a nominal defendant for
15 the purposes of diversity analysis.

16 6. Therefore, complete diversity of citizenship exists because Plaintiff
17 resides in, and is a citizen of California; and the substantive Defendant in this
18 action is incorporated in Delaware with its Principal Place of Business in Dearborn,
19 Michigan, making it a citizen of Delaware and Michigan, and not California.

20 7. At issue is Plaintiff’s claim of breach of warranty pursuant to the
21 Song-Beverly Consumer Warranty Act. The Complaint alleges that the “Plaintiff
22 suffered damages in a sum to be proven at trial in an amount that exceeds \$25,000.”
23 (*See* Exh. “A” (Complaint, First Cause of Action.)) In the same Cause of Action,
24 the Plaintiff claims to be entitled to “a civil penalty of two times Plaintiff’s actual
25 damages.” *Id.* The Complaint itself demands damages that exceed the \$75,000
26 amount in controversy required to establish jurisdiction in the United States District
27 Court. 28 U.S.C. § 1441(b).

1 8. The instant complaint is one of hundreds of Complaints filed in two
 2 California counties by the same law firm. Liability is pleaded as five counts
 3 constituting violations of Song-Beverly and two counts constituting fraud (in the
 4 inducement and in the omission). The Complaints seek the following by way of *ad*
 5 *damnum* clause: Plaintiff's actual damages; restitution; civil penalty pursuant to
 6 Song-Beverly of two times the cost of the vehicle; costs of suit and attorneys' fees
 7 pursuant to Song-Beverly; any other remedies available under Song-Beverly, the
 8 UCC, or any other remedy the court deems proper; prejudgment interest; and,
 9 punitive damages related to the fraud counts.

10 **INTRADISTRICT ASSIGNMENT**

11 9. The United States District Court for the EASTERN District of
 12 California embraces the district and division in which the SACRAMENTO state
 13 court action is now pending, and thus this Court is a proper venue for the action
 14 pursuant to 28 U.S.C. § 84 (c)(1).

15 **NOTICE TO STATE COURT**

16 10. Pursuant to 28 U.S.C. § 1446(d), the undersigned counsel hereby
 17 certifies that a true and correct copy of this Notice of Removal will be promptly
 18 filed with the Clerk of the Superior Court of the State of California, County of
 19 SACRAMENTO, and served upon all adverse parties.

20 **WHEREFORE**, Defendant hereby notifies Plaintiffs and their attorneys that
 21 the above-entitled action, formerly pending in the SACRAMENTO County
 22 Superior Court has been removed from that court to this Court.

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DATED: May 25, 2018

LECLAIRRYAN, LLP

By: /s/ H. Paul Efstratis
H. Paul Efstratis, Esq.
Kristina O. Lambert, Esq.
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Attorneys for Defendant
FORD MOTOR COMPANY

DATED: May 25, 2018

LECLAIRRYAN, LLP

By: /s/ Kristina O. Lambert
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FORD MOTOR COMPANY

DATED: May 25, 2018

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